

DOE N 450.4

"Assignment Of Responsibilities For Executive Order 13148, Greening The Government Through Leadership In Environmental Management"

Performance Based Contracts: Order Review Panel Decision On Team Report Recommendations

The Panel has reviewed the subject report and has disposed of the recommendation contained therein as follows.

We concur in the team report recommendation, which is to allow the Notice to expire on September 1, 2002.



Department of Energy
Washington, DC 20585
February 04, 2002

MEMORANDUM FOR OFFICE OF PROCUREMENT AND ASSISTANCE
MANAGEMENT, Attn: Michael L. Righi, ME-61

FROM: Raymond P. Berube (signed)
Deputy Assistant Secretary
for Environment

Subject: Performance Based Contracts: DOE Notice (N) 450.4 Review Report

Pursuant to the schedule set forth for the Performance Based Contracts: Order Review, attached is the N 450.4 review team final report. Comment provided by the Office of Procurement and Assistance Management has been incorporated into the final report.

DOE N 450.4 and its Contractor Requirements Document (CRD) assign responsibilities within DOE for Executive Order 13148, *Greening the Government Through Leadership in Environmental Management*. The Executive Order requires each Federal agency to ensure that the goals and requirements of the Executive Order are incorporated into agency environmental directives. The Executive Order also requires that the Federal Acquisition Regulation (FAR) Council develop acquisition policies for contractors to supply agencies with all information necessary to comply with the EO. Accordingly, the DOE N 450.4 review team report recommendation is that the CRD be rescinded once the revised FAR clauses required by Executive Order 13148 have been approved by OMB and published.

If you have any questions, please contact Steven Miller, GC-51 (DOE N 450.4 review team coordinating office representative), or Thomas Traceski, EH-413 (DOE N 450.4 review team originating office representative) at 6-2925 and 6-2481, respectively.

Attachment

Performance-Based Contracts
DOE Order Review

Directive Number and Title

DOE N 450.4, ASSIGNMENT OF RESPONSIBILITIES FOR EXECUTIVE ORDER 13148, GREENING THE GOVERNMENT THROUGH LEADERSHIP IN ENVIRONMENTAL MANAGEMENT (Appendix 1).

Originating Office

Office of Environment, Safety and Health (EH)

Review Team Members

Steven Miller, Office of General Counsel, Environment, GC-51 (Team Coordinator)
Katherine Batiste (for Dan Kelley), Strategic Petroleum Reserve, SPRO, (Program Office Representative)
Jerry Faul (CH) (Program Office Representative)
Thomas Traceski, Office of Environment, Safety and Health, RCRA/CERCLA Division, EH-413 (Originating Office Representative)

Background

Establishment. DOE N 450.4, and its Contractor Requirements Document (CRD), was established to assign responsibilities within DOE for Executive Order 13148, *Greening the Government Through Leadership in Environmental Management*, hereafter referred to as the EO. The EO requires each Federal agency to ensure that the goals and requirements of the EO are incorporated into agency environmental directives, policies, and documents affected by those goals and requirements. Secretary Abraham approved DOE N 450.4 on February 5, 2001. [The Notice, and its CRD, was vetted through the Field Management Council prior to Secretarial approval.]

Modifications/Updates. On August 24, 2001, Deputy Secretary Blake extended DOE N 450.4 until September 1, 2002, unless it is rescinded before that date (Appendix 2). The requirements of DOE N 450.4 will be incorporated into a new Order and Manual, currently under development, entitled: ENVIRONMENTAL PROTECTION PROGRAM, which will replace the existing DOE Order 5400.1, GENERAL ENVIRONMENTAL PROTECTION PROGRAM originally issued in 1988.

Overview of Requirements

Purpose and means for accomplishing order. The purpose of DOE N 450.4 is to assign responsibilities for the actions required by the EO to Departmental elements. Reflecting the EO, DOE N 450.4 uses a performance-based approach for integrating environmental management considerations into Departmental policies and operations. DOE N 450.4 does not prescribe processes or methods for integrating these considerations; rather, it states desired results and outcomes. For example, among other things, the EO requires the implementation of an environmental management systems (EMS) at Federal facilities and directs agencies to incorporate this EMS requirement into their existing environmental directives. While DOE N 450.4 requires the establishment of EMSs at DOE facilities, it does not prescribe detailed, "how-to" processes for facilities to follow in establishing their EMS.

DOE N 450.4 follows similar, performance-based approaches for implementing other provisions of the EO. These include requiring DOE elements to comply with the Emergency Planning and Community Right to Know Act (EPCRA) without regard to Standard Industrial Classification (SIC) code limitations in the statute. DOE N 450.4 also includes goals for reducing releases and off-site transfers of toxic chemicals, reducing the use of selected priority chemicals, promoting sustainable management of Federal facility lands, and phase out the procurement of Class I ozone-depleting substances (ODSs). DOE N 450.4 contains no prescriptive process directions for meeting these goals. Instead, DOE N 450.4 requires DOE elements to measure the effectiveness of facilities in meeting these goals.

Purpose and means for accomplishing the CRD. The purpose of the CRD is to make the requirements of DOE N 450.4 applicable to DOE facilities management contractors. The CRD lists eight requirements, each of which is dictated by the EO and included in DOE N 450.4. As with DOE N 450.4, the CRD is performance-based, in that the CRD requires contractors to achieve the following types of outcomes: implementation of an EMS, compliance with EPCRA; reduced releases and off-site transfers of toxic chemicals, and reduced use of selected priority chemicals.

Analysis

Do we still need to apply the Order to contractors? Yes. The EO requires the Federal Acquisition Regulation (FAR) Council to develop acquisition policies and procedures for contractors to supply agencies with all information necessary to comply with the EO. Once the Office of Management and Budget (OMB) has approved these newly developed policies and procedures and they are published, the CRD can be rescinded. Notwithstanding development of such policies, DOE N 450.4, and its CRD, will expire on September 1, 2002, and the requirements of the Notice will become part of the new, performance-based ENVIRONMENTAL PROTECTION PROGRAM Order and Manual, which is being developed to replace DOE Order 5400.1.

Are there less bureaucratic approaches? No. DOE N 450.4 contains minimal process direction. DOE N 450.4 defines outcomes and results to be achieved, without requiring the use of specific processes, methods, or approaches. The White House Council on Environmental Quality (CEQ) has indicated continuing Administration support for the EO, and CEQ is pursuing ways to

strengthen the EO and enhance Federal agency implementation. CEQ has embraced the entire series of executive orders on greening the government (e.g., *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*; *Greening the Government Through Federal Fleet and Transportation Efficiency*) as nonprescriptive approaches for going beyond compliance to cost-effectively attain higher levels of environmental performance.

Is the application overly broad? No. The EO applies to all federal agencies and requires that agency environmental directives, policies, and documents affected by the EO incorporate the goals and requirements of the EO. The EO also requires the development of appropriate acquisition policies to ensure contractors supply agencies with all information necessary to comply with the EO.

Are there useful changes to the contractor requirements document? None identified. The majority of the DOE operating contractors support the CRD goals and expectations and are in conformance with them. Many have established an EMS, and several have been third-party certified to the ISO 14001 EMS Standard, or recognized by the U.S. Environmental Protection Agency for implementing an EMS. (Appendix 3).

Summary Recommendations

Once the revised FAR clauses required by the EO have been approved by OMB and published, the CRD can be rescinded. Notwithstanding such a revision, DOE N 450.4, and its CRD, will expire on September 1, 2002.

Minority Views

None.

Originating Office Comments

The originating office (EH) agrees with the above findings and recommendation.

Additionally, EH would like to pursue discussions with the Interagency Environmental Leadership Workgroup (established by the EO) on the prospect of establishing a performance-based approach to environmental management in performance-based contracting, whereby certain overly prescriptive, process-driven, or outdated FARs can be rescinded in exchange for the contractors' participation in the National Environmental Performance Track (NEPT). The NEPT, spearheaded by the U.S. Environmental Protection Agency, is designed to recognize and encourage excellence in environmental performance. The NEPT rewards participants that go beyond command-and-control (regulatory) compliance, to demonstrate cost-effective and efficient environmental improvement. DOE participation in NEPT through performance-based contracting would provide the Department with a comprehensive, meaningful indicator of environmental performance across the complex, as well as a real-time performance measure in support of site-specific contractor award fee determinations. Furthermore, DOE contractor

participation in NEPT, would heighten public recognition of the Department's leadership in environmental management.

Appendices

1. DOE N 450.4 and CRD
2. Notice of Extension of DOE N 450.4
3. Department of Energy - Demonstrating Leadership in Environmental Management Systems

Department of Energy — Demonstrating Leadership in Environmental Management Systems

Several Department of Energy Facilities have been recognized for excellence in environmental management systems. By the year 2005, all DOE facilities must have in place an Environmental Management System, in accordance with Executive Order 13148, and DOE Notice 450.4. These DOE sites are leading the way.

Integrated Safety Management is the Department's management framework for protecting workers, the public, and the environment. These facilities have demonstrated how to integrate their environmental management system within their overall Integrated Safety Management system.

National Environmental Performance Track In December 2000, the Environmental Protection Agency recognized five Department of Energy sites as Charter Members of the Environmental Achievement Track. No other Federal agency had as many sites included.

- Kansas City Plant
- Strategic Petroleum Reserve
- Waste Isolation Pilot Plant
- Western Area Power Administration
- West Valley Demonstration Project

To be included in the National Environmental Achievement Track, facilities must:

- have an Environmental Management System in place
- commit to continuous environmental improvement
- commit to public outreach and performance reporting
- achieve a record of sustained compliance with environmental regulations.

For additional information: www.epa.gov/performance-track.

ISO 14001 Environmental Management System Standard Five Department of Energy sites have also been registered by a third-party auditor as conforming to the international Environmental Management System Standard ISO 14001.

- Savannah River Site (DOE and all organizations on site)
- Kansas City Plant (Honeywell Federal Manufacturing and Technologies)
- Strategic Petroleum Reserve (Dyne-McDermott)
- Waste Isolation Pilot Plant (Westinghouse TRU Solutions)
- Brookhaven National Laboratory (Brookhaven Science Associates)

For additional information: <http://es.epa.gov/oeca/fedfac/emsprimer.pdf>

For additional information contact:
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